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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,283	03/16/2004	Gregory Piskun	P29-005	3044
7590 12/22/2005			EXAMINER	
R. Neil Sudol 714 Colorado Avenue Bridgeport, CT 06605-1601			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	
DATE MAILED: 12/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,283	<b>Applicant(s)</b> PISKUN, GREGORY	
	<b>Examiner</b> Matthew J. Kasztejna	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 20-47 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-30 and 35-47 is/are rejected.
- 7) ☒ Claim(s) 31-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Disposition of Claims***

In response to the amendment filed on October 7, 2005, new claims 45-47 are acknowledged. The current rejection of claims 20-44 is *withdrawn*. The new grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-30 and 35-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,655,698 to Yoon in view of U.S. Patent No. 4,577,787 to Leisenring.

**In regards to claims 20-29, 30 and 44**, Yoon discloses a surgical instrument comprising: an instrument shaft provided at a distal end with two jaws 20 and 22 at least one of the jaws including a C- or U-shaped clamping member movable alternately away and towards the other of the jaws for clamping and occluding tissues (see Fig. 1), but is silent with respect to an anoscope used in combination with the tissue occlusion device. However, Yoon teach of an operating instrument used for applying a plurality of staples to body tissue in a substantially simultaneous manner. Leisenring teaches of an anoscope including a hollow body defining a longitudinal channel, the hollow body being closed at a distal end and at least partially open at a proximal end, the hollow body

having a sidewall provided with a window spaced from at least the distal end (see Fig. 1). Furthermore, Leisenring discloses hinged sections, wherein the slides can be partly withdrawn and out of the way of the operator, thus permitting ready access to the diseased parts and permitting treatment of the same with various operating instruments (see Col. 2, Lines 85-92). It would have been obvious to one skilled in the art at the time the invention was made to use the tissue occlusion device in combination with the anoscope in order to provide an operator clear access to lesions within the colon, as taught by Leisenring, and thus more effective removal of the lesions. The combination of both Yoon and Leisenring results in an apparatus which is inherently capable of performing the recited method claims.

**In regards to claims 36 and 46**, Yoon discloses a surgical instrument wherein the hemorrhoid occlusion device further includes a hemorrhoid occlusion component mounted to the jaws for acting on tissues gripped between the jaws, to couple the tissues to each other (see Col. 2, Lines 57-67).

**In regards to claims 35 and 47**, Yoon discloses a surgical instrument wherein the occlusion component is a stapling mechanism (see Col. 3, Lines 1-10).

**In regards to claim 37**, Yoon discloses a surgical instrument wherein the occlusion component is a stapling mechanism including a staple cartridge removably mounted to one of the jaws (see Col. 3, Lines 30-50).

**In regards to claim 38**, Leisenring discloses an anoscope wherein the anoscope further includes a shutter member mounted to the hollow body to cover the window

during a positioning of the anoscope in an anal canal, the shutter member being movable relative to the hollow body to uncover the window to permit hemorrhoidal tissues to protrude through the window into the channel (see Col. 2, Lines 85-90).

**In regards to claims 39 and 45**, Leisenring discloses an anoscope wherein the hollow body has a longitudinal axis, the sidewall being formed with a bulging portion located on one side of the axis and extending from the proximal end partially along a length of the sidewall towards the distal end, the window being located in the bulging portion (see Fig. 1).

**In regards to claims 40-41**, Yoon discloses a surgical instrument wherein the jaws are mounted to the shaft so as to remain parallel to one another during opening and closing strokes of the jaws (see Fig. 1).

**In regards to claims 42-43**, Yoon discloses a surgical instrument wherein the jaws are parts of a cartridge removably attachable to the shaft (see Col. 3, Lines 10-57).

#### ***Allowable Subject Matter***

Claims 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 20,30 and 44 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK *ML*  
12/14/05

  
BEVERLY M. FLANAGAN  
PRIMARY EXAMINER